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IN THE HIGH COURT OF JUDICATURE, M.P. : JABALPUR.

CRIMINAL APPEAL NO. 1327 OF 1999

Manglu, S/o Shri Bhagwani Gond,
Aged about 35 years,
R/o village- Sadak Chirchari,
Police Station Bagnadi,
District- Rajnandgaon, (M.P.). ***** APPELLANT
(In Jail)

V E R S U S

The State of Madhya Pradesh,
Through- Arakshi Kendra Baghnadi,
District- Rajnandgaon, ***** RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(38)

मामला क्रमांक Cr.A.No.1927/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo, Ag. C.J. &
Hon'ble Mr. Sunil Kumar Sinha, J.

3/1/2007

Shri S.K. Dadsena, counsel for the appellant.

Shri Ravindra Agrawal, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, Ag. C.J.

This appeal is directed against the judgment of conviction and order of sentence dated 10th June 1999 passed by 2nd Additional Sessions Judge, Rajnandgaon, in S.T. No.142/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for one year. He has challenged the same in this appeal.

The case of the prosecution, in brief, is that on 20th July 1998 at about 6 p.m. when deceased Temu @ Phaneshwar along with Mallu (PW-10) were coming on cycle, the accused caught hold of cycle, as a result of which Mallu and Temu fell down, thereafter accused Manglu attacked Temu @ Phaneshwar with a knife (Churi). When Mallu and Firangiram tried to intervene, the accused threatened them that he will kill them and asked them to leave the place, as a result of injuries sustained by Temu @ Phaneshwar, he succumbed to the injuries on the spot instantaneously. The incident was witnessed by Firangi, Mallu, Vijay Kumar, Malinbai and Punaram. Kamal Kishore gave merg intimation (Ex.-P/10) on the basis of which F.I.R. (Ex.-P/11) was registered for commission of offence under Section 302 of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

I.P.C.. The investigation was handed over to H.L. Shukla, sub inspector, he left for scene of occurrence, prepared site plan (Ex.-P/12) of the place of occurrence, after giving notice (Ex.-P/14) to the Panchas, prepared inquest (Ex.-P/13) on the body of the deceased. The Investigating Officer took into possession sleepers of the accused, cap of the deceased and other articles from the place of occurrence, blood stained soil and plain soil under Ex.-P/15. While in the police custody, the accused gave memorandum (Ex.-P/16) regarding the place where he kept the knife and clothes which he was wearing at the time of commission of offence. In pursuance of that, above articles were taken into possession at the instance of the accused under Ex.-P/17. The body of deceased Temu @ Phaneshwar was sent for postmortem examination to the Primary Health Centre, Churiya under Ex.-P/9-A where Dr. S.K. Ahuja (PW-6) conducted postmortem on the body of the deceased, prepared postmortem report Ex.-P/9 and opined that cause of death is shock due to excessive haemorrhage resulting from Injury Nos.1 & 2. The mode of death was homicidal in nature. The recovered articles were sent to the Forensic Science Laboratory, Raipur for chemical examination from where report Ex.-P/18 was received.

After completion of usual investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Rajnandgaon, who in turn, committed the case to the Sessions Judge, Rajnandgaon from where 2nd Additional Sessions Judge received the case on transfer.

The prosecution in order to establish the charge against the accused examined 21 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he has been falsely

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

implicated in the crime merely on the doubt, he is innocent and he has not committed any offence.

Learned Additional Sessions Judge after hearing respective counsel and perusal of the record, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the accused/appellant has not disputed homicidal death of deceased Temu @ Phaneshwar. Apart from that, from the ocular evidence of PW-2 Punaram, PW-10 Mallu, PW-12 Firangiram, PW-13 Malin Bai & PW-14 Vijay Kumar, as also medical evidence of Dr. S.K. Ahuja (PW-6), who has stated that he conducted postmortem on the body of Temu @ Phaneshwar on 21-7-98, he found as many as 7 incised wounds on the body of Temu @ Phaneshwar, as a result of Injury Nos. 1 & 2, lung was damaged, 7th & 8th ribs were fractured, cause of death was shock as a result of excessive haemorrhage, injuries were ante-mortem in nature, death was homicidal, it is established that death of deceased Temu @ Phaneshwar was homicidal in nature.

As far as involvement of the accused in crime in question is concerned, as per the prosecution case, the incident was witnessed by PW-2 Punaram, PW-10 Mallu, PW-12 Firangiram, PW-13 Malin Bai & PW-14 Vijay Kumar. Learned counsel for the accused/appellant mainly argued on the ground that at the time of the incident there was darkness, therefore, it was not possible for the witnesses to identify the accused correctly that he was the person who attacked the deceased.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have scrutinized the evidence of eyewitnesses. PW-2 Punaram has stated that he along with friends was playing near the place of occurrence. He saw that the accused was attacking the deceased. In cross-examination, he has stated that it is true that there was darkness, but it is incorrect to say that he could not identify the accused on account of darkness. He identified the accused on account of his voice, as the accused asked him to run away from the place, as a result of which they run away from the place.

Similarly, PW-10 Mallu has stated that on 20th July 98 he along with deceased Temu went to the house of one Rana in village Chirchari for electricity fitting. He asked Temu to wait on the road and he went to the house of Shiv for repairing electricity. He returned within 10-15 minutes, they were going back on bicycle, near the house of Firangi the accused caught hold of his bicycle, as a result of which, they fell down, thereafter the accused caught hold of deceased and started attacking with a knife. He attacked repeatedly on chest. However, he could not see the place where, in fact, injury was inflicted. He became frightened and entered the house of Son Singh and informed the wife of Son Singh about the incident. From there, he went to his house, as the accused asked him to run away otherwise he will also kill him. From the evidence of this witness, it is established that Mallu along with deceased was coming on cycle, on the way, the accused caught hold of cycle, as a result of which, they fell down, thereafter, the accused attacked the deceased. Therefore, this witness saw the accused attacking

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —S—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

from close range, the accused asked him to run away otherwise he will kill him. Hence, in view of this evidence, no argument can be adduced that this witness was not able to identify the accused.

Even the evidence of these two witnesses stands corroborated by the evidence of PW-12 Firangiram near whose house the accused attacked the deceased. He has stated that on hearing screams, he came out of his house and saw that the accused was attacking the deceased with knife. The accused asked him to run away otherwise he will kill him. PW-13 Malin Bai has also corroborated the above evidence and stated that she saw the accused attacking the deceased with a knife. PW-14 Vijay Kumar, child aged about 11 years, has also corroborated the above evidence. He has stated that he was playing along with Radheshyam, Puran & 2-3 boys. He saw the accused attacking the deceased with a knife. All these witnesses are independent witnesses. In cross-examination, defence has not been able to elicit any circumstance which shows that these witnesses have deposed either on account of interest in the deceased or on account of animosity against the deceased. The evidence of these witnesses is consistent and same inspires confidence of the Court.

Learned counsel for the accused/appellant was not able to point out any circumstance which makes the evidence of these witnesses unreliable or untrustworthy. Therefore, in view of the above evidence of these witnesses as also recovery of knife at the instance of the accused clearly establishes involvement of the accused in the crime in question.

Learned counsel for the accused/appellant further argued that the manner in which incident occurred, the offence against the accused does not travel beyond Section 304 Part-II of the I.P.C., as the prosecution has not

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

been able to adduce evidence regarding motive or intention of the accused to cause death of the deceased.

In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have perused postmortem report, evidence of the doctor as also evidence of eyewitnesses. As per the eyewitnesses evidence, the accused attacked the deceased with knife, as per postmortem report Ex.-P/9 the deceased sustained 7 incised wounds, injury No.1 was inflicted between 6th & 7th rib, there was cut wound in the size of 2" x 0.5" x 4", which was extending up to the lung, as a result of this injury lung was damaged, muscles were also damaged, injury No.2 was on auxiliary line on the right side of chest in the size of 3" x 2" in the shape of swelling, 7th & 8th ribs were fractured, muscles & Artery were damaged, as per the ocular evidence, the accused attacked with a knife, as has been mentioned earlier, the deceased sustained 8 injuries, out of which injury Nos. 1 & 2 were on the vital part, as a result of which ribs were fractured, lung was damaged which resulted into excessive haemorrhage which was the main cause for death of the deceased. In the matter of **Thangaiya V. State of Tamil Nadu** reported in **2005 Cri.L.J. 684**, in para-22, the Apex Court observed that it cannot be said as a rule of universal application that whenever one blow is given Section 302 IPC is ruled out. It would depend upon the facts of each case. The weapon used, size of the weapon, place where the assault took place, background facts leading to the assault, part of the body where the blow was given are some of the factors to be considered to ascertain intention of the accused.

In the present case, the accused attacked repeatedly with a knife, dangerous weapon, out of which two fatal injuries were inflicted on the chest,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

as a result of which lung was damaged, as also 7th & 8th ribs were fractured. The repetitive assault made by the accused that too on vital part of the body with a dangerous weapon like knife establishes intention of the accused to cause death of the deceased. Therefore, the prosecution has been successful in establishing the fact that the accused attacked the deceased with intention to cause his death.

In the result, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court. The judgment is based on legal and sound reasoning. There is no ground before us to interfere with the finding of the trial Court. The appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
Acting Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

Barve